

Second	MPH
172 .....	47.3
173 .....	47.2
174 .....	47.2
175 .....	47.4
176 .....	47.9
177 .....	48.5
178 .....	49.1
179 .....	49.5
180 .....	50
181 .....	50.6
182 .....	51
183 .....	51.5
184 .....	52.2
185 .....	53.2
186 .....	54.1
187 .....	54.6
188 .....	54.9
189 .....	55
190 .....	54.9
191 .....	54.6
192 .....	54.6
193 .....	54.8
194 .....	55.1
195 .....	55.5
196 .....	55.7
197 .....	56.1
198 .....	56.3
199 .....	56.6
200 .....	56.7
201 .....	56.7
202 .....	56.3
203 .....	56
204 .....	55
205 .....	53.4
206 .....	51.6
207 .....	51.8
208 .....	52.1
209 .....	52.5
210 .....	53
211 .....	53.5
212 .....	54
213 .....	54.9
214 .....	55.4
215 .....	55.6
216 .....	56
217 .....	56
218 .....	55.8
219 .....	55.2
220 .....	54.5
221 .....	53.6
222 .....	52.5
223 .....	51.5
224 .....	50.5
225 .....	48
226 .....	44.5
227 .....	41
228 .....	37.5
229 .....	34
230 .....	30.5
231 .....	27
232 .....	23.5
233 .....	20
234 .....	16.5
235 .....	13
236 .....	9.5
237 .....	6
238 .....	2.5
239 .....	0

**Subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act**

SOURCE: 58 FR 62216, Nov. 24, 1993, unless otherwise noted.

**§ 51.390 Purpose.**

The purpose of this subpart is to implement section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.). This subpart sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to section 110 and Part D of the CAA.

**§ 51.392 Definitions.**

Terms used but not defined in this subpart shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other DOT regulations, in that order of priority.

*Applicable implementation plan* is defined in section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA.

CAA means the Clean Air Act, as amended.

*Cause or contribute to a new violation for a project* means:

[57 FR 52987, Nov. 5, 1992, as amended at 58 FR 59367, Nov. 9, 1993]

(1) To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or

(2) To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

*Control strategy implementation plan revision* is the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide).

*Control strategy period* with respect to particulate matter less than 10 microns in diameter (PM<sub>10</sub>), carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), and/or ozone precursors (volatile organic compounds and oxides of nitrogen), means that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM<sub>10</sub>, NO<sub>2</sub>, CO, and/or ozone, as appropriate. This period ends when a State submits and EPA approves a request under section 107(d) of the CAA for redesignation to an attainment area.

*Design concept* means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

*Design scope* means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

*DOT* means the United States Department of Transportation.

*EPA* means the Environmental Protection Agency.

*FHWA* means the Federal Highway Administration of DOT.

*FHWA/FTA project*, for the purpose of this subpart, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

*FTA* means the Federal Transit Administration of DOT.

*Forecast period* with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR part 450.

*Highway project* is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

*Horizon year* is a year for which the transportation plan describes the envisioned transportation system according to § 51.404.

*Hot-spot analysis* is an estimation of likely future localized CO and PM<sub>10</sub> pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration must be estimated

and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

*Incomplete data area* means any ozone nonattainment area which EPA has classified, in 40 CFR part 81, as an incomplete data area.

*Increase the frequency or severity* means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

*ISTEA* means the Intermodal Surface Transportation Efficiency Act of 1991.

*Maintenance area* means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA, as amended.

*Maintenance period* with respect to a pollutant or pollutant precursor means that period of time beginning when a State submits and EPA approves a request under section 107(d) of the CAA for redesignation to an attainment area, and lasting for 20 years, unless the applicable implementation plan specifies that the maintenance period shall last for more than 20 years.

*Metropolitan planning organization (MPO)* is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607. It is the forum for cooperative transportation decision-making.

*Milestone* has the meaning given in section 182(g)(1) and section 189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

*Motor vehicle emissions budget* is that portion of the total allowable emissions defined in a revision to the appli-

cable implementation plan (or in an implementation plan revision which was endorsed by the Governor or his or her designee, subject to a public hearing, and submitted to EPA, but not yet approved by EPA) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for oxides of nitrogen (NO<sub>x</sub>) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NO<sub>x</sub> budget will be achieved with measures in the implementation plan (as an implementation plan must do for VOC milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a NO<sub>x</sub> budget if NO<sub>x</sub> reductions are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.

*National ambient air quality standards (NAAQS)* are those standards established pursuant to section 109 of the CAA.

*NEPA* means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.). *NEPA process completion*, for the purposes of this subpart, with respect to FHWA or FTA, means the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

*Nonattainment area* means any geographic region of the United States which has been designated as nonattainment under §107 of the CAA for any pollutant for which a national ambient air quality standard exists.

*Not classified area* means any carbon monoxide nonattainment area which EPA has not classified as either moderate or serious.

*Phase II of the interim period* with respect to a pollutant or pollutant precursor means that period of time after

the effective date of this rule, lasting until the earlier of the following:

(1) Submission to EPA of the relevant control strategy implementation plan revisions which have been endorsed by the Governor (or his or her designee) and have been subject to a public hearing, or

(2) The date that the Clean Air Act requires relevant control strategy to be submitted to EPA, provided EPA has notified the State, MPO, and DOT of the State's failure to submit any such plans. The precise end of Phase II of the interim period is defined in § 51.448.

*Project* means a highway project or transit project.

*Protective finding* means a determination by EPA that the control strategy contained in a submitted control strategy implementation plan revision would have been considered approvable with respect to requirements for emissions reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A).

*Recipient of funds designated under title 23 U.S.C. or the Federal Transit Act* means any agency at any level of State, county, city, or regional government that routinely receives title 23 U.S.C. or Federal Transit Act funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

*Regionally significant project* means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that

offer an alternative to regional highway travel.

*Rural transport ozone nonattainment area* means an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census) and is classified under Clean Air Act section 182(h) as a rural transport area.

*Standard* means a national ambient air quality standard.

*Submarginal area* means any ozone nonattainment area which EPA has classified as submarginal in 40 CFR part 81.

*Transit* is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

*Transit project* is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and (3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

*Transitional area* means any ozone nonattainment area which EPA has classified as transitional in 40 CFR part 81.

*Transitional period* with respect to a pollutant or pollutant precursor means that period of time which begins after submission to EPA of the relevant control strategy implementation plan which has been endorsed by the Governor (or his or her designee) and has been subject to a public hearing. The

transitional period lasts until EPA takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in § 51.448.

*Transportation control measure (TCM)* is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in § 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this subpart.

*Transportation improvement program (TIP)* means a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450. I11*Transportation plan* means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

*Transportation project* is a highway project or a transit project.

[58 FR 62216, Nov. 24, 1993, as amended at 60 FR 57184, Nov. 14, 1995]

#### § 51.394 Applicability.

(a) *Action applicability.* (1) Except as provided for in paragraph (c) of this section or § 51.460, conformity determinations are required for:

(i) The adoption, acceptance, approval or support of transportation plans developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;

(ii) The adoption, acceptance, approval or support of TIPs developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and

(iii) The approval, funding, or implementation of FHWA/FTA projects.

(2) Conformity determinations are not required under this rule for individual projects which are not FHWA/FTA projects. However, § 51.450 applies to such projects if they are regionally significant.

(b) *Geographic applicability.* (1) The provisions of this subpart shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(2) The provisions of this subpart apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>).

(3) The provisions of this subpart apply with respect to emissions of the following precursor pollutants:

(i) Volatile organic compounds and nitrogen oxides in ozone areas;

(ii) Nitrogen oxides in nitrogen dioxide areas; and

(iii) Volatile organic compounds, nitrogen oxides, and PM<sub>10</sub> in PM<sub>10</sub> areas if:

(A) During the interim period, the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT; or

(B) During the transitional, control strategy, and maintenance periods, the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(c) *Limitations.* (1) Projects subject to this regulation for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. All phases of such